

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
FT. LAUDERDALE DIVISION

ADVOCATES FOR THE DISABLED,
INC., PETER SPALLUTO and
ERNST ROSENKRANTZ,

CASE NO: 00-6025-CIV
JUDGE: MIDDLEBROOKS
MAGISTRATE: BANDSTRA

Plaintiffs,

vs.

SEA CASTLE RESORT MOTEL
PARTNERSHIP and MICHELLE
BROWNELL,

Defendants.

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CLERK OF DISTRICT COURT
S.D. OF FLA. - HIA
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DEFENDANT, SEA CASTLE RESORT MOTEL PARTNERSHIP'S
MOTION TO DISMISS SECOND AMENDED COMPLAINT
(AND MEMORANDUM OF LAW)

COMES NOW THE Defendant, SEA CASTLE RESORT MOTEL PARTNERSHIP ("SEA CASTLE"), by and through its undersigned attorneys and makes this its Motion to Dismiss Plaintiff's Second Amended Complaint and in furtherance thereof would state as follows:

1. That Plaintiff's Initial Complaint was never served upon SEA CASTLE nor was its existence ever made known to SEA CASTLE by Plaintiff. SEA CASTLE only became aware of the institution of this lawsuit (and Plaintiff's Complaint) at the time that Plaintiff's Amended Complaint was served upon it.

2. That Plaintiff's Amended Complaint was served upon Defendant, SEA CASTLE on May 15, 2000.

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3. That pursuant to this Court's Order dated September 8, 2000, Plaintiff's Second Amended Complaint was considered to be filed as of September 6, 2000.

4. That prior to Plaintiff's service of its Amended Complaint or its Second Amended Complaint, SEA CASTLE had not been served with any papers or pleadings in this action and was unaware of either the pendency or threat of this action.

5. That the subject matter of Plaintiff's lawsuit is a motel known as the SEA CASTLE RESORT INN located at 730 North Ocean Blvd., Pompano Beach, Florida (the business").

6. That on or about March 10, 2000 prior to Plaintiff's filing of its April 18, 2000 Amended Complaint, SEA CASTLE sold and conveyed the business to a third party and has not owned, leased or operated the subject business since March 10, 2000.

7. That the Plaintiff's Amended Complaint and Second Amended Complaint seek only injunctive relief against this Defendant (as well as attorney's fees and costs).

8. That Plaintiff's Second Amended Complaint apparently acknowledges that although SEA CASTLE was the owner of the business (§9) the "present owner" of the business is Co-Defendant, LANCASTER SEA CASTLE RESORT, LTD. who acquired title to the business on March 10, 2000 (§11).

9. That SEA CASTLE is not a proper Defendant to this action and (despite Plaintiff's allegations within paragraph 12 of its Amended Com-

plaint to the contrary) does not own, lease or operate a place of public accommodation within the meaning of the Americans with Disabilities Act.

10. That as against SEA CASTLE, Plaintiff's Second Amended Complaint is moot and no subject matter jurisdiction exists for the consideration of Plaintiff's action against SEA CASTLE.

11. That the only relief requested against SEA CASTLE within the Second Amended Complaint is Injunctive Relief. Because SEA CASTLE is not the owner of the business, no Injunctive Relief can possibly be entered against SEA CASTLE.

12. That Plaintiffs also seek attorney's fees and costs and may attempt to argue that this Defendant somehow should be responsible for their attorney's fees and costs. Unfortunately, Plaintiffs never attempted to place SEA CASTLE on notice that it claimed that SEA CASTLE was in violation of the Americans with Disabilities Act prior to serving SEA CASTLE with its Amended Complaint. Plaintiffs not only filed the Initial Complaint without ever serving SEA CASTLE with a copy, but took no action to put SEA CASTLE on notice of Plaintiff's claims until after SEA CASTLE had sold the business and Plaintiff had amended its Complaint and served its Amended Complaint on SEA CASTLE on May 15, 2000. SEA CASTLE should not be responsible for Plaintiff's failure to put SEA CASTLE on notice of potential claims.

13. That a copy of the Affidavit of SEA CASTLE's managing partner is attached hereto (and includes copies of the Deeds and Bill of Sale

conveying the business), labeled as Exhibit "A" and the contents thereof are incorporated herein by reference as if set out in full in support of this Motion to Dismiss. The original Affidavit was filed in this Court under Certificate of mailing dated June 28, 2000 in support of this Motion to Dismiss Plaintiff's Amended Complaint and that original Affidavit is incorporated herein by reference in support of this Defendant's Motion to Dismiss Plaintiff's Second Amended Complaint.

14. That SEA CASTLE by and through their attorneys had contacted Plaintiff's counsel prior to the filing of this Motion and had provided them with all documentation necessary to prove that SEA CASTLE did not own, lease or operate a place of public accommodation since March 10, 2000, however Plaintiff and their counsel have refused to dismiss SEA CASTLE from this lawsuit.

15. That the undersigned counsel certifies that simultaneously with the service of this Motion to Dismiss that he is contacting counsel for the Plaintiffs to determine whether an Agreed Order can be entered upon this Motion.

WHEREFORE Defendant, SEA CASTLE RESORT MOTEL PARTNERSHIP, moves this Honorable Court to enter an Order dismissing Plaintiff's Amended Second Complaint against it and awarding SEA CASTLE RESORT MOTEL PARTNERSHIP such other and further relief as is just and appropriate.

I HEREBY CERTIFY that a copy of the foregoing was furnished via U.S. Mail on this 19th day of September 2000 to: Lawrence W. Fuller, Esq., Fuller, Mallah & Associates, P.A., 111 Lincoln Rd., #802, Miami Beach,

FL 33139 and Amy C. Galloway, Esquire, Duke, Mullin & Galloway, P.A.,
1700 East Las Olas Blvd., PH-1, Fort Lauderdale, Florida 33301.

Kelley, Herman & Smith
Attorneys for Sea Castle
1401 East Broward Blvd., #206
Ft. Lauderdale, Florida 33301
(954) 462-7806

A handwritten signature in dark ink, appearing to read "Jeffrey B. Smith", is written over a horizontal line.

JEFFREY B. SMITH
Florida Bar No: 356050

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
FT. LAUDERDALE DIVISION

ADVOCATES FOR THE DISABLED,
INC., PETER SPALLUTO and
ERNST ROSENKRANTZ,

CASE NO: 00-6025-CIV
JUDGE: MIDDLEBROOKS
MAGISTRATE: BANDSTRA

Plaintiffs,

vs.

AFFIDAVIT

SEA CASTLE RESORT MOTEL
PARTNERSHIP and MICHELLE
BROWNELL,

Defendants.

STATE OF MICHIGAN
COUNTY OF OAKLAND

BEFORE ME, the undersigned authority, personally appeared CYNTHIA J. BECKMAN, to me well known who, after first being duly sworn, deposes and states as follows:

1. That the Affiant's name is CYNTHIA J. BECKMAN.
2. That the Affiant at all times material was the managing general partner of the Co-Defendant in this action, SEA CASTLE RESORT MOTEL PARTNERSHIP ("SEA CASTLE") AND has personal knowledge of the facts set forth in this Affidavit.
3. That the subject matter of Plaintiff's lawsuit is a motel known as the SEA CASTLE RESORT INN located at 730 North Ocean Blvd., Pompano Beach, Florida (the business").
4. That SEA CASTLE became the owner of the business in the late 1980's.
5. That SEA CASTLE sold the business to Lancaster Sea Castle Resort Limited on March 10, 2000.
6. That the business is located upon two (2) parcels of real property, one (1) of which prior to March 10, 2000 was owned by SEA CASTLE and the other, prior to March 10, 2000 was leased to SEA

CASTLE.

7. That on March 10, 2000 SEA CASTLE by Warranty Deed, Quit Claim Deed and Bill of Sale conveyed and sold the business to Lancaster Sea Castle Resort Limited. True and correct copies of the Warranty Deed, the Quit Claim Deed and the Bill of Sale (without attached inventory list) are attached hereto as composite Exhibit "1" and the contents thereof are incorporated herein by reference as if set forth in full.

8. That on or about May 15, 2000 SEA CASTLE was served with Plaintiff's Amended Complaint.

9. That prior to May 15, 2000 neither SEA CASTLE nor its individual partners, principals or agents were aware that the above captioned action had been filed or that the filing of the above captioned action was threatened.

10. That SEA CASTLE sold and conveyed the business prior to the filing of Plaintiff's April 18, 2000 Amended Complaint.

11. That SEA CASTLE had not been served with any prior versions of Plaintiff's Amended Complaint and only became aware of this action at the time of service of the Amended Complaint on May 15, 2000.


12. That SEA CASTLE no longer possesses any interest in the business.

13. That SEA CASTLE has not owned, leased or operated the business since March 10, 2000.

FURTHER AFFIANT SAYETH NAUGHT.


CYNTHIA J. BECKMAN

The foregoing instrument was acknowledged before me this 26 day of June, 2000, by CYNTHIA J. BECKMAN, who is personally known to me or who has produced Driver's License as identification and who did take an oath.


NOTARY PUBLIC

My Commission Expires 4-24-04

SHAWN LAVETTER
Notary Public, Oakland County, MI
ACTING IN OAK CO.
My Commission Expires Apr 24, 2004

Parcel ID Number: 18331-00-00900

WARRANTY DEED (STATUTORY FORM - section 689.02, F.S.)

THIS INDENTURE, made this 16th day of MARCH, 2000, by

SEA CASTLE RESORT MOTEL PARTNERSHIP, a Michigan General Partnership, whose Post Office Address is: P.O. Box 250303, West Bloomfield, MI 48325-0303, "Grantor"; and

LANCASTER SEA CASTLE RESORT, LTD., a Florida Limited Partnership, whose Post Office Address is: 730 N. Ocean Blvd., Pompano Beach, FL 33062, "Grantee",

WITNESSETH that said grantor, for and in consideration of the sum of TEN AND NO/100 DOLLARS, and other good and valuable considerations to said grantor in hand paid by said grantee, the receipt whereof is hereby acknowledged, has granted, bargained, and sold to the said grantee, and grantee's heirs and assigns forever, the following described land, situate, lying, and being in Broward County, Florida, to-wit:

The South 100 feet of the North 1,065 feet of Government Lot 1 in Section 31, Township 48 South, Range 43 East, lying East of State Road 1A1A.

Subject to zoning and/or restrictions and prohibitions imposed by governmental authority; restrictions, easements and other matters appearing on the plat and/or common to the subdivision; and taxes for the year 2000 and all subsequent years.

and said grantor does hereby fully warrant the title to said land, and will defend the same against the lawful claims of all persons whomsoever.

"Grantor" and "grantee" are used for singular or plural, as context requires.

IN WITNESS WHEREOF, grantor has hereunto set grantor's hand and seal the day and year first above written.

Signed, sealed, and delivered
in the presence of:

[Signature]
Printed Name

[Signature]
Printed Name

SEA CASTLE RESORT MOTEL PARTNERSHIP
a Michigan General Partnership
By: [Signature]
CYNTHIA J. BECKMAN, Managing General
Partner

STATE OF FLORIDA)
COUNTY OF BROWARD)

The foregoing instrument was acknowledged before me this 16th day of MARCH, 2000, by CYNTHIA J. BECKMAN, Managing General Partner of SEA CASTLE RESORT MOTEL PARTNERSHIP, a Michigan General Partnership, on behalf of the partnership, who is personally known to me or who produced the following identification: [Signature]
[Signature]



Janet D. Levy
Commission # CC 803831
Expires Feb. 26, 2003
Bonded Through
Atlantic Bonding Co., Inc.

[Signature]
NOTARY PUBLIC

Printed Name of Notary

EXHIBIT "1"

Parcel ID Number: 18331-00-00900

QUIT CLAIM DEED

THIS QUITCLAIM DEED, made this 10 day of MARCH, 2000, between

HUGH BECKMAN and CYNTHIA J. BECKMAN, his wife, and CYNTHIA J. BECKMAN, as Managing General Partner of SEA CASTLE RESORT MOTEL PARTNERSHIP, a Michigan General Partnership, whose Post Office Address is: P.O. Box 250303, West Bloomfield, MI 48325-0303, first party, to

LANCASTER SEA CASTLE RESORT, LTD., a Florida Limited Partnership, whose Post Office Address is: 730 N. Ocean Blvd., Pompano Beach, FL 33062, second party,

WITNESSETH that the said first party, for and in consideration of the sum of TEN AND NO/100 DOLLARS, in hand paid by the said second party, the receipt whereof is hereby acknowledged, does hereby remise, release and quit-claim unto the said second party forever, all the right, title, interest, claim and demand which the said first party has in and to the following described lot, piece or parcel of land, situate, lying and being in the County of BROWARD, State of FLORIDA, to-wit:

Parcel I: The South 100 feet of the North 1,065 feet of Government Lot 1 in Section 31, Township 48 South, Range 43 East, lying East of State Road A1A.

Parcel II: Leasehold interest only in and to The East 200 feet of the South 114 feet of the North 1,065 feet of that part of Government Lot 1 in Section 31, Township 48 South, Range 43 East, lying West of State Road A1A.

TO HAVE AND TO HOLD the same together with all and singular the appurtenances thereunto belonging or in anywise appertaining, and all the estate, right, title, interest, lien, equity and claim whatsoever of the said first party, either in law or equity, for the only proper use, benefit and profit of the said second party forever.

IN WITNESS WHEREOF, the said first party has signed and sealed these presents the day and year first above written.

Signed, sealed, and delivered
in the presence of:

John H. Campbell

John H. Campbell

Printed Name

James O. Campbell

Printed Name

John H. Campbell

Printed Name

James O. Campbell

Printed Name

Hugh Beckman
HUGH BECKMAN

Cynthia J. Beckman
CYNTHIA J. BECKMAN

SEA CASTLE RESORT MOTEL PARTNERSHIP
a Michigan General Partnership

By:

Cynthia J. Beckman
CYNTHIA J. BECKMAN, Managing General
Partner

STATE OF FLORIDA)
COUNTY OF BROWARD)

The foregoing instrument was acknowledged before me this 10th day of MARCH, 2000, by HUGH BECKMAN and CYNTHIA J. BECKMAN, his wife, and CYNTHIA J. BECKMAN, Managing General Partner of SEA CASTLE RESORT MOTEL PARTNERSHIP, a Michigan General Partnership, on behalf of the partnership, who is personally known to me or who produced the following identification: Hugh Beckman, Cynthia Beckman.

Janel D. Levy
NOTARY PUBLIC

Printed Name of Notary



Bill of Sale

Know All Men By These Presents, That this 10th day of March, 2000 AD, That
Sea Castle Resort Motel Partnership, a Michigan general partnership

of the County of Broward, State of Florida, first party, and
Lancaster Sea Castle Resort, Ltd., a Florida limited partnership

whose address is 730 N. Ocean Blvd., Pompano Beach, FL 33062

of the County of Broward, State of Florida, second party.

Witnesseth that the FIRST PARTY, for and in consideration of the sum of

-----TEN DOLLARS (\$10)----- DOLLARS,
and other good and valuable consideration to FIRST PARTY in hand paid by SECOND PARTY, the receipt whereof is hereby acknowledged, has
granted, bargained, sold, transferred and delivered to the said SECOND PARTY and SECOND PARTY'S heirs, successors and assigns forever,
the following goods and chattels.

See attached Exhibit A, inventory list

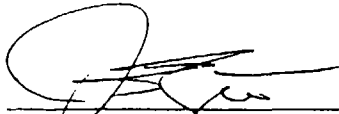
To Have and to Hold the same unto second party, and the second party's heirs, personal representatives, successors and assigns forever.

And the first party covenants with the second party, and the second party's heirs, personal representatives, successors and assigns
that the first party is the lawful owner of the said goods and chattels; that they are free from all encumbrances; that the first
party has good right to sell and transfer said property, goods and chattels, and that the first party will warrant and defend the
sale and transfer of the said property, goods and chattels hereby made to the second party, and the second party's heirs, personal
representatives, successors and assigns, against the lawful claims and demands of all persons whomsoever. This covenant shall be
binding upon the first party and the first party's heirs, personal representatives, successors and assigns.

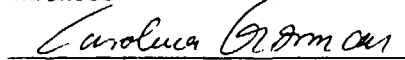
In Witness Whereof, the first party has hereunto set its hand and seal the day and year first above written

Signed, sealed and delivered in our presence:

Sea Castle Resort Motel
Partnership, a Michigan general
partnership


Printed Name: James D. Camp
Witness

By:  (Seal)
P.O. Address 730 N. Ocean Blvd., Pompano Beach, FL 33062

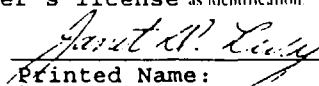

Printed Name: Carolina Gorman
Witness

STATE OF Florida
COUNTY OF Broward

The foregoing instrument was acknowledged before me this 10th day of March, 2000 by
on behalf of Sea Castle Resort Motel Partnership, a Michigan general
partnership, a General Partnership
he is personally known to me or he has produced his Florida driver's license as identification



Janet D. Levy
Commission # CC 803831
Expires Feb 26, 2003
Bonded Thru
Atlantic Bonding Co., Inc.


Printed Name:
Notary Public
My Commission Expires